I should say that it was exactly a transaction of an unpaid vendor allowing a favoured purchaser to postpone the payment on giving security. The transaction, therefore, is clearly not even one made in the course of an investment business. if the word 'business' is properly used in connection with her operations of investment."

With regard to the last sentence it should be remembered that Mrs. Neale had, in *Bull* v. *Simpson, supra,* been earlier held to be carrying on a moneylending business as a moneylender on loans she had made in the course of what she had claimed were "investments" on her part.

The situation is analogous to the case of instalment sale contracts. This matter is dealt with by Mr. Clifford L. Pannam, Senior Lecturer at the University of Melbourne in his "Law of Money Lenders in Australia and New Zealand" which I have referred to earlier. I quote from this book at page 6 as follows: —

"A vendor may agree to sell goods to a purchaser upon terms other than in return for an immediate cash payment. He may, for example, agree to accept payment of the purchase price in weekly or monthly instalments of a fixed amount — even though possession of the goods is to be given to the purchaser immediately. Interest will probably be charged on the outstanding balance. Such an agreement may contain a term that property in the goods is not to pass until the last payment has been made. On the other hand property in the goods may pass immediately to the purchaser. Whatever form the agreement takes there is a deferment in payment for the goods and interest will normally be charged for the privilege of not paying cash. The question arises as to whether these transactions are loans of money. It seems reasonably clear that they are not."

The author then proceeds to deal with *Rabone* v. *Deane.* If I may respectfully add, the clarity and logic of this proposition cannot be assailed, even if it does occur in a book written by a living author on what some people may consider to be a somewhat malodorous subject.

If the summons before me is viewed from the point of view that it involves a case of security taken by an unpaid vendor and nothing more then it cannot be seriously argued that it involves a loan transaction.

Mr. James Loh, for the defendant, seems to have relied strongly on the fact that the plaintiffs were also directors of Seng Giap Ltd., a firm of registered moneylenders and that some of them had individually lent money previously on mortgages to others on one or more scattered transactions not necessarily in the course of the business of moneylending. It seems to me that he misled himself by concluding that the arrangements between the parties amounted to a loan transaction merely because of these matters. As Mr. Poh submitted, the original plan was that the $160,000 odd was to be lent to the first defendant by Seng Giap Ltd. as registered moneylenders. Had that course been pursued this summons would never have arisen. Mr. Poh assured me that the registered moneylenders had insufficient funds and that that is the reason why the plaintiffs themselves collectively as individuals entered into the arrangements in question. If it were necessary for me to do so I would be prepared to hold that even if a firm of registered moneylenders like Seng Giap Ltd. had been the original owners who became vendors of the property in question in the first instance and had genuinely taken a mortgage from the first defendant, as the plaintiffs did, the transaction could not have been held to be a loan transaction and they would not have been caught by the Moneylenders Ordinance for the simple reason that they never lent any money at all. It seems to me to be as simple as that.

I therefore decide the preliminary point in favour of the plaintiffs. The question of costs can, I think, await the disposal of the summons as a whole.

I regret that owing to my ill-health this judgment has been somewhat delayed.

Preliminary point decided in favour of the plaintiff.

Solicitors: *Wee Swee Teow & Co.; Mendis & Loh.*

RE SAN DEVELOPMENT CO.'s APPLICATION

[O.C.J. (Chua J.) September 6, 1971]

[Singapore — Originating Motion No. 19 of 1971]

Administrative Law — Application for certiorari and mandamus — Failure of Commissioner of Appeals, Appeals Board (Land Acquisition) to exercise discretion— Application for appeal out of time — Delay due to fault of solicitors — Land Acquisition Act, 1966, s. 23(3).

This was an application for an order of *certiorari* to quash the order made by the Commissioner of Appeals, Appeals Board, (Land Acquisition) and for an order of *mandamus* directing the said commissioner to hear and determine the appeal of the applicants against the award by the Collector of Land Revenue. The appeal had been made out of time and the appellants had applied for permission to proceed with the appeal notwithstanding that the notice of appeal was not lodged within the time limited. The Commissioner of Appeals dismissed the application holding (*inter alia*) that section 23(3) of the Land Acquisition Act, 1966 which gave the board a discretion to permit any person to proceed with an appeal notwithstanding that the notice of appeal was not lodged within the time limited, did not apply where the solicitor of a party had been negligent.

Held: the commissioner had taken the erroneous view that he had no discretion as section 23(3) of the Land Acquisition Act, 1966 did not apply to any case where the delay was due to the negligence of the solicitor of the intended appellant. The commissioner had a discretion and he had not exercised it. The order of the commissioner will therefore be quashed and an order of *mandamus* will be made directing the commissioner to consider and determine the application of the appellants according to law.

Cases referred to:-

(1) *Gatti* v. *Shoosmith* [1939] 3 All E.R. 916.

(2) *R.* v. *Justices of Kingston* 86 L.T.R. 589.

MOTION.

E. F. N. Gratiaen Q.C. and *Harry L. Wee* for the applicants.

G. S. Hill and *Wu Tchi Chu* for the respondent.

Cur. Adv. Vult.

Chua J.: This is an application by San Development Company (Singapore) Limited (hereinafter referred to as the applicants) for an order of *certiorari* to remove into the High Court and quash the order made on 21st September, 1970, by the Commissioner of Appeals, Appeals Board (Land Acquisition), and also for an order of *mandamus* directing the said commissioner to hear and determine the appeal of the applicants against the award made by the collector of land revenue.

The following facts are not in dispute. The applicants are the owners of land known as Lot 112/44 of Mukim I. A notice of compulsory acquisition of the said land was served on the applicants in February, 1970, and the award of the collector was given on 31st July, 1970, stating the compensation which was allowed for the said land at $220,400. On 8th August, 1970, the applicants wrote to the collector stating that they wished to appeal to the appeals board. A notice of appeal was filed on behalf of the applicants by their solicitors on 17th August, 1970. The notice of appeal was lodged three days out of time. The applicants' solicitors then made an application to the appeals board on 7th September, 1970 for permission, under the provisions of section 23(3) of the Land Acquisition Act, 1966, to proceed with the appeal notwithstanding that the notice of appeal was not lodged within the time limited. The only affidavit filed in support of the application was that of one Abdul Rahim Effendi, who described himself as a clerk in the employ of the applicants' solicitors and this was what he stated:

"On a date which I cannot remember in the second week of August last I was instructed by my employer, Mr. P. T. Wong, to prepare a Notice of Appeal against the award herein. Due to pressure of work I merely had a quick glance through the papers in the files and got the wrong impression that the said award was made on the 8th August which would give me time until the 21st August within which to file the Notice of Appeal. Accordingly the Notice of Appeal was filed on the 17th August, 1970.

It has since been drawn to my attention that the award herein was in fact made on the 31st July, 1970, and consequently the said Notice of Appeal was filed by me three days out of time."

The application was heard on 21st September, 1970, by the commissioner who dismissed it.

Section 23(3) of the Land Acquisition Act, 1966, provides:

"The Board may, in its discretion and on such terms as it may see fit, permit any person to proceed with an appeal notwithstanding that the notice of appeal or petition of appeal was not lodged within the time limited therefor by this section, if it be shown to the satisfaction of the Board that such person was prevented from lodging such notice or petition in due time owing to absence from Singapore, sickness or other reasonable cause and that there has been no unreasonable delay on the part of such person."

At the hearing of the application it was contended on behalf of the applicants that the expression "other reasonable cause" in section 23(3) gave the board a discretion to permit the applicants to proceed with the appeal when the delay was due to a mistake made by the lawyer's clerk. For the collector it was argued that for sections 23(3) to apply the applicants must show that they were prevented from lodging the notice either owing to absence from Singapore or sickness or to some other reasonable cause of a like nature. The commissioner at the end of the submissions said:

"He has not even filed an affidavit. It is ridiculous for me to grant the application where the owner has not put the full circumstances before the Board. Was he represented before the collector? Who appeared for him? What was he doing during the 8 days, from the 31st July to the 8th? Why did he not instruct counsel? This section is meant for people who are away, not in Singapore or lying dangerously ill or about to die and not applicable where a solicitor has been negligent. The owner can sue your law firm for negligence in not filing the notice in time. I am afraid the application must be refused."

Three weeks after the order was made dismissing the application, the commissioner, in view of the applicants' contemplated appeal to the Court of Appeal, prepared his "grounds of judgment" in which he expressed the view that there was no right of appeal from an order made by the board on an interlocutory application. He also amplified the reasons which he gave at the hearing for dismissing the application. In addition he considered another aspect of the matter which was never discussed at the hearing. The commissioner said:

"There is another important aspect of the matter which must be considered. Nobody seems to have noticed or given consideration to the fact that the appellants not only failed to file their notice of appeal in due time but also failed to make in due time the deposit of $5000 required under section 23(1)(b) of the Act. This deposit was made eleven days out of time. Now section 24 of the Act provides that if the deposit is not made in due time, the appeal shall be deemed to have been withdrawn."

He then proceeded to discuss the provisions of other sections of the Act and came to this finding:

"It seems to me that the failure to lodge the required deposit within fourteen days of the date of the receipt of the award, results in the irretrievable loss of the right of appeal against the award of the collector. And that is what happened in this case. The appellants lodged the required deposit of $5,000 — eleven days out of time and in consequence they lost their right of appeal."

In his "grounds of judgment" the commissioner said this of section 23(3):

"In my opinion the operative word in the sub-section is "prevented". In an application under this sub-section there is a burden on the applicant to establish to the satisfaction of the Board that he was prevented from lodging his notice of appeal owing to a reasonable cause and two examples of a reasonable cause are given, namely, absence from Singapore and sickness. Any other cause must be a cause which the board considers reasonable having regard to all the circumstances of the case. Having considered carefully all the circumstances of this case, I was of the opinion that the appellants had failed to establish that they were prevented from lodging their notice of appeal in due time owing to a reasonable cause. There was nothing to prevent them from filing their notice of appeal in due time. And if their solicitors have failed them, the appellants are not without their remedy."

The real substance of the application before this court turns upon the true construction of section 23(3).

Section 23(3) was clearly framed for the furtherance of justice and not to defeat it. It cannot possibly be the intention of Parliament that every person who is aggrieved by the award of the collector must lodge the notice of appeal personally. He is perfectly entitled to do so through a solicitor. I see no reason why the words "other reasonable cause" should be given a restricted meaning in that the other reasonable cause should be of a like nature as absence from Singapore or sickness of the intended appellant. That is so narrow a construction that it is impossible to believe that parliament has such an intention in mind. Those words are words of the utmost generality. The only qualifications of any "other" cause is that it must be a reasonable cause having regard to all the circumstances of the case. In my view those words are not restricted to something personal to the intended appellant and that a mistake on the part of an intended appellant's solici-

tor may come within the meaning of "other reasonable cause". (*Gatti* v. *Shoosmith*,[1]).

In this case the commissioner took the erroneous view that he had no discretion as section 23(3) did not apply to any case where the delay was due to the negligence of the solicitor of the intended appellant. In my view the commissioner had a discretion and he had not exercised it.

As I have said, in his "grounds of judgment" the commissioner also pronounced another ground for dismissing the application namely that the required deposit was made out of time. This matter was not raised nor argued before the commissioner and it was not the cause of the commissioner's decision at the hearing to dismiss the application. I should not, therefore, consider this matter as it is totally irrelevant as far as the application before this court is concerned. Counsel for the applicants, however, submitted that the applicants are entitled to ask for a declaration by this court that the finding of the commissioner as regards the deposit, whether it be correct or not, is wholly irrelevant to the whole question under section 23(3), but I do not think the applicants are entitled to such a declaration.

Counsel for the applicants submitted that, as it was not in dispute between the parties at the hearing before the commissioner that the delay in filing the notice of appeal was due to the mistake of the solicitor's clerk, and as the delay was only three days for which the applicants were in no way to blame, no reasonable tribunal, correctly directed as to its powers, could fairly and properly make an order refusing permission to proceed and that the appropriate order for this court to make is to direct the commissioner to make an order allowing the applicants to proceed with the appeal and to direct the commissioner thereafter to hear the appeal under the Act. In my view that is not the proper order to make in this case.

Lord Alverstone in *Rex* v. *Justices of Kingston*[2] said:

"I think it is quite unusual to direct a judicial tribunal to act in a particular way unless it is quite plain that what they have to do is purely ministerial and is not judicial."

Channel J. in the same case said (at p. 591):

"I think it is an important matter which should be thoroughly understood, that this court does not by *mandamus* direct justices or any public body or anybody else upon whom a duty is cast, how and in what manner they are to perform their duty. They simply direct them by *mandamus* to perform their duty. I think also that even where the facts are all admitted, so that in the particular circumstances of a particular case — as my brother has pointed out in this case — there happens to be but one way of performing that duty, still the *mandamus* goes to perform the duty, and not to perform it in a particular way."

The commissioner in this case had not exercised his discretion. He should consider all the aspects of the matter and then decide whether or not permission to proceed with the appeal should be granted.

For these reasons there will therefore be an order that the order of 21st September, 1970, of the commissioner be removed into this court and quashed and there will also be an order that a *mandamus* do go to the commissioner directing him to consider and determine the application of the applicants according to law.

Order accordingly.

Solicitors: *Braddell Bros.; Rodyk & Davidson.*

NG KAY THIAM & ANOR. v. REDHILL PAPER CONVERTERS LTD.

[C.A. (Tan Ah Tah, Winslow & Choor Singh JJ.) September 25, 1971]

[Singapore — Civil Appeal No. 26 of 1970]

Factories — Machine operation — Breach of statutory duty — Contributory negligence — Factories Ordinance, 1958, ss. 21, 22, 28 & 31.

Negligence — Factories — Breach of statutory duty.

Damages — Hand — Amputation of right forearm.

This was an appeal against the decision of the learned Chief Justice, dismissing the plaintiffs' claim in respect of injuries sustained by the first plaintiff then aged 17½. The appellant/first plaintiff was employed by the respondents as a sweeper in their factory. He also assisted in the operation of a machine which compressed shredded paper or paper sweepings into bales of paper. The machine consists of three sections, the prime mover, the transmission machinery with its control, and the end device or appliance. On one occasion the appellant/first plaintiff's right hand was caught in the well of the machine, resulting in the amputation of part of his right forearm. Expert evidence revealed that the part of the machinery involved in this accident was the end device. He brought an action against the respondents claiming: (1) negligence at common law; (2) breach of statutory duty under section 28 of the Factories Ordinance, 1958; (3) breach of section 21 of the same Ordinance which required every part of the transmission machinery to be securely fenced. In the closing stages of the trial, an attempt was made to amend the plaintiffs' pleadings to incorporate a claim under section 22 of the Factories Ordinance, 1958, as an alternative. This section deals with dangerous parts of any machinery other than prime movers and transmission machinery. This amendment was refused in the court below but allowed by the Court of Appeal.

Held, allowing the appeal: (1) the claim based on negligence at common law failed because: (a) the only possible danger was that if anyone operating the machine placed his hands in the well of the machine whilst it was in operation; and (b) the appellant/first plaintiff had been instructed by the foreman, first by demonstration and then by supervision, as to how to operate the machine and of the possible danger of using the hand instead of a metal rod which was provided for pressing down the rising paper into the well;

(2) the claim for breach of statutory duty under section 28 of the Factories Ordinance failed for the same reason;

(3) the claim under section 31 also failed because the section related to transmission machinery and not to the end device or to dangerous parts of any machinery other than prime movers and transmission machinery;

(4) the end device was dangerous without secure fencing and therefore the defendants/respondents were liable under section 22 of the Factories Ordinance. The appellant/first plaintiff was not wilful or deliberately foolhardy in the face of the situation in which he found himself. He acted very much in the manner a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur. One has to consider not only a prudent alert and skilled operator intent upon his task, but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part;